IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3217 OF 2004

IN

SUIT NO.4913 OF 2000

...

Majid A. Oomerbhoy ...Plaintiff

v/s.

Rashid A. Oomerbhoy & Ors. ...Defendants

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Mr.Pradeep Sancheti with Mr.Snehal Shah and Mr.Shrinivas Deshmukh i/b Thakore Jariwala for the Plaintiff.

Mr.Sanjay Jain i/b S.K.Srivastava & Co. for the Defendant No.1.

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CORAM: D.K.DESHMUKH, J.

DATED: 30TH SEPTEMBER,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. Various reliefs are claimed by this Notice of Motion. Reliefs claimed by prayers (a) to (d) admittedly emanate from the alleged breach of the order dated 30th July, 2001 passed by this Court. Admittedly, on the allegations that the same order mentioned above has been willfully breached by the Defendant No.1, Contempt Petition No.107 of 2003 was filed. That was the petition filed under the Contempt of Courts Act under Article 215 of the Constitution of India and also under Order 39 of CPC. That petition was decided by order dated 28th September, 2004. By a detailed judgment the learned single Judge of this court held that the Plaintiff has not been able to prove that the order of this court in question was willfully breached by the Defendant No.1 and therefore, the contempt petition was disposed of. That order was challenged in Special Leave Petition before the Supreme Court. The Supreme Court disposed of the Special Leave Petition by order dated 29-4-2005. The Supreme Court

dismissed the Petition. The Supreme Court, however, observed that the observations made by this Court in the order will not come in the way of the Petitioner in seeking other remedies. According to the Petitioner, the present Notice of Motion has been taken out pursuant to the observations of the Supreme Court in the aforesaid order. According to the learned Counsel, reliefs by prayer clauses (a) to (d) have been claimed under Order 39 of CPC. According to the learned Counsel, for the purpose of granting reliefs under Order 39, it is not necessary for the Plaintiff to prove that the Defendant has willfully breached the order.

2. In my opinion, apart from the fact that I do not find much substance in the submission made by the learned Counsel for the Plaintiff, considering that this court by a detailed judgment has held that the Plaintiff has not been successful in proving that the Defendant No.1 has committed willful breach of the order, it will be improper for this court to take action against the Defendant No.1 on the footing that he has committed breach of the order. Therefore, no reliefs in terms of prayer clauses (a) to (d) of this Notice of Motion can be granted.

3. So far as reliefs claimed by prayer clause (e) of this Notice of Motion are concerned, by that prayer clause a direction is sought to the Prothonotary & Sr.Master of this Court to initiate action against the person who may be found responsible for having manipulated the copy of the affidavit in reply.

4. In my opinion, an inquiry into the question whether any affidavit in reply has been manipulated or not cannot be carried out at the interim stage. The Plaintiff will have to wait till the suit is tried. This question can be raised by the Plaintiff at that stage. In my opinion, therefore, no reliefs in terms of prayer clause (e) can be granted at this stage.

5. So far as reliefs claimed by prayer clause (f) is concerned, the alleged transfer, even according to the Plaintiff, has taken place in the year 2000. Admittedly, the Plaintiff has not approached the Receiver before taking out this Notice of Motion requesting the Receiver to take any action in that regard. In any case, the learned Counsel appearing for the Defendant No.1 has stated that the Defendant

No.1 does not claim any interest in the trade-mark "IL POSTINO". He further states that an affidavit will be filed in this Court on behalf of the company R.R.Oomerbhoy Pvt.Ltd. stating that even that company does not claim any interest in the trade-mark "IL POSTINO". In this view of the matter, therefore, no orders are necessary in terms of prayer clause (f) of the Notice of Motion.

6. So far as prayer clause (g) is concerned, it is common ground before me that the direction has already been issued to the Receiver to submit a report in relation to current status of the trade-mark. There is some controversy whether the Receiver has submitted the report. If the Receiver has not already submitted the report, the Receiver is directed to submit the report in terms of the order already passed by the court.

7. The Plaintiff is directed to submit a true copy of the plaint within a period of two weeks from today.

8. Notice of Motion disposed of.

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